

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

Plaintiff(s),

v.

FREDERICK V. WILLIAMS, et al.,

Defendant(s).

2:12-CR-463 JCM (VCF)

ORDER

Presently before the court are Magistrate Judge Ferenbach's report and recommendation. (Doc. # 278). No objections have been filed and the deadline to do so has expired.

Defendant Frederick Vernon Williams has filed a motion to dismiss the third superseding indictment. (Doc. # 256). Two days after that motion was filed, this court entered an order adopting several reports and recommendations issued by the magistrate judge. (Doc. # 261). In that order, the court denied Williams' motion to reconsider the magistrate judge's order denying his request to reopen bail. (*Id.* at 10-11). Williams appealed that order. (Doc. # 263).

Relying on Williams' notice of appeal, the magistrate judge now recommends that the motion to dismiss the third superseding indictment be denied without prejudice on the basis that the appeal divested this court of jurisdiction. A review of the notice and the docket before the appellate court reveals, however, that Williams is challenging only the portion of this court's order regarding his pretrial detention. Therefore because the validity of the third indictment is not an "aspect of the case

1 involved in the appeal,” this court retains jurisdiction to decide it. *See, e.g., United States v. Powell*,
2 24 F.3d 28, 31 (9th Cir. 1994)(citing *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 8,
3 103 S.Ct. 400, 402, 74 L.Ed.2d 225 (1982)).

4 Accordingly,

5 IT IS HEREBY ORDERED that the court declines to adopt the magistrate judge’s report and
6 recommendation (doc. # 278). The magistrate judge may decide the motion in the normal course.

7 DATED July 21, 2014.

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10 **UNITED STATES DISTRICT JUDGE**